

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DOMINICK BARKSDALE	:	
1403 Loretta Avenue	:	
Mays Landing, New Jersey 08330	:	
Plaintiff,	:	Civil Action
v.	:	Jury Trial Demanded
CUP KING LLC	:	
f/k/a and/or a/k/a and/or d/b/a	:	
SMITHVILLE EATS CAFÉ	:	
6300 Landis Avenue	:	
Sea Isle City, NJ 08243	:	
and	:	
NICK HOLLAND	:	
c/o CUP KING, LLC	:	
6300 Landis Avenue	:	
Sea Isle City, NJ 08243	:	
Defendants.	:	

COMPLAINT

I. PRELIMINARY STATEMENT

Plaintiff, Dominick Barksdale brings this action under 42 U.S.C.S. §1981. Plaintiff seeks equitable relief, compensatory and punitive damages, costs and attorney's fees from Defendants for Defendants' racial discrimination, retaliation, and other tortious actions. discriminatory practices, retaliation, and other tortious actions.

II. JURISDICTION AND VENUE

1. Jurisdiction over this action is conferred on this Court by 28 U.S.C. §1331, 1343 and 42 U.S.C. §2000 e-5(f) and as this matter is one of Federal Question.

2. Plaintiff has complied with all jurisdictional prerequisites as he is not required to exhaust his administrative remedies under 42 U.S.C.S. §1981.

3. Venue is proper in the District of New Jersey, pursuant to 28 U.S.C. §1391 and 42 U.S.C.S. §1981.

4. At all times material hereto, Defendants Cup King, LLC f/k/a and/or a/k/a and/or d/b/a Smithville Eats Café and Nick Holland, (hereinafter collectively referred to as "Defendants") were "engaged in an industry affecting commerce" within the meanings of §701(a) and 701(b) of Title VII, 42 U.S.C. §2000e and 42 U.S.C.S. §1981.

5. At all times material hereto, Defendant was an "employer" as defined by §701(b) of Title VII, 42 U.S.C. §2000 e and 42 U.S.C.S. §1981.

6. At all times material hereto, Plaintiff is afforded the protections provided under 42 U.S.C.S. §1981 as Plaintiff was discriminated against, on the basis of his Race.

7. At all times material hereto, Plaintiff was subjected to severe and pervasive harassment as enumerated *supra*.

8. This Honorable Court maintains Jurisdiction over this matter as it is one of Federal Question.

III. THE PARTIES

9. Plaintiff, Dominick Barksdale (hereinafter "Barksdale"), is an adult male who is African American.

10. Upon information and belief, Defendants owned and operated a café named Smithville Eats Café, located at 45 South New York Avenue, Suite 204, Smithville, NJ 08203.

11. Upon information and belief, Jack Eck (hereinafter "Eck"), a Caucasian male, was

employed by Defendants, as a supervisor, and at all times material hereto had the authority to discipline and terminate the Plaintiff.

12. At all times material hereto, the discrimination enumerated within this Complaint occurred within the State of New Jersey at Defendants' location in Smithville, New Jersey.

IV. FACTUAL BACKGROUND

13. Plaintiff was hired by Defendants on April 6, 2017, signing a contract for employment with the Defendants.

14. Defendants' employees Jack Eck, and chef Fred Freda signed Plaintiff's employment contract.

15. Plaintiff understood he had been hired by the Defendants as a chef.

16. During the course of his employment, Plaintiff was told by Eck that was unqualified, and that he "was not even a \$12.00 an hour line cook" and that he was not even qualified to "wash dishes."

17. Eck then told Plaintiff that Plaintiff could not work for the Defendants as it was "not the vision", which Plaintiff understood to be a disparaging comment about his race, African-American.

18. Plaintiff was pretextually terminated by the Defendants on April 13, 2017.

19. Any acts or omissions attributed herein to Defendants, were committed or omitted by its principals, directors, officers, managers, and/or employees who were acting in the course and scope of their employment with said Defendants.

20. At all times material hereto, Plaintiff was subject to harassment and discrimination based upon his Race, which included a hostile work environment and retaliation.

21. At all times material hereto the harassment, hostile work environment and discrimination to which Barksdale was subjected was unwelcome, severe and unreasonably altered the condition of his employment.

22. Barksdale was profoundly upset and affected by the discrimination, harassment and hostile work environment that he was subjected to during the course and scope of his employment.

23. During the course and within the scope of his employment with Defendants, Barksdale was treated less favorably than similarly situated, non-Black employees.

24. At all times material hereto, Eck aided and abetted the aforementioned harassment, hostile work environment and discrimination to which Plaintiff was subjected.

25. The aforementioned conduct of Defendants, their employees, and Eck was materially adverse and would dissuade a reasonable worker from exercising and/or attempting to exercise their rights and benefits under 42 U.S.C.S. §1981.

26. Notwithstanding, Plaintiff's complaints and clear indication to Defendant that the aforesaid comments and conduct were unwelcome, unwanted and upsetting, the harassing conduct and accusations continued throughout the course of his employment with Defendants.

27. At no time did Defendants, or any of the principles, supervisors, managers, officers, directors, or agents of Defendants, institute an effective grievance procedure designed to eliminate racial discrimination of employees and no reasonable steps were taken to prevent the same in the workplace; and if said policy existed; Defendant failed to follow any requirements of said policy.

28. As a direct and proximate result of Defendants' aforesaid acts and omissions, the

hostile work environment which was created thereby, and Defendants' discriminatory practices,

Plaintiff:

- (a) was discharged from his employment to his great financial detriment;
- (b) was caused pain and suffering, physical injury and a loss of enjoyment of life; and
- (c) suffered severe emotional distress, embarrassment, humiliation and depression.

COUNT I

**DOMINICK BARKSDALE V. CUP KING LLC f/k/a and/or a/k/a and/or d/b/a
SMITHVILLE EATS CAFÉ and NICK HOLLAND
VIOLATION OF THE EQUAL RIGHTS UNDER THE LAW 42 U.S.C.S. § 1981**

29. Plaintiff hereby incorporates by reference all of the aforementioned allegations set forth above.

30. The conduct of Defendants and their treatment of Barksdale, in his employment violated 42 U.S.C.S. §1981 as Plaintiff's discharge, harassment, hostile work environment, and discrimination was based upon his Race.

WHEREFORE, Plaintiff, Dominick Barksdale, demands judgment against Defendants, including:

- (a) A declaration that Defendants' actions as described herein violated Title 42 U.S.C.S. §1981;
- (b) equitable and declaratory relief;

- (c) compensatory damages for Plaintiff's loss of past and present future income and benefits, pain and suffering inconvenience, embarrassment, emotional distress and loss of enjoyment of life;
- (d) punitive damages;
- (e) payment of interest and Plaintiff's attorney's fees and costs associated with bring the claim; and
- (f) such other relief as this Court may deem appropriate under the circumstances.

Respectfully submitted,

SAFFREN & WEINBERG

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Dated: 4/9/21